

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA : CRIMINAL NO. 09-797-1

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ROBERT J. THOMPSON, : Philadelphia, Pennsylvania

: February 8, 2010

Defendant : 2:07 p.m.

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TRANSCRIPT OF GUILTY PLEA HEARING
BEFORE THE HONORABLE CYNTHIA M. RUFE
UNITED STATES DISTRICT JUDGE

- - -

APPEARANCES:

For the Government: TERRI A. MARINARI, ESQUIRE
Assistant United States Attorney
United States Attorney's Office
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106

For the Defendant: MARC NEFF, ESQUIRE
Law Offices Marc Neff
1818 Market Street
Thirteenth Floor
Philadelphia, PA 19103

Transcribers Limited

17 Rickland Drive

Sewell, NJ 08080

856-589-6100 • 856-589-9005

1 Audio Operator: L. Kashner Wittje

2 Transcribed By: Jeff Nathanson

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1 (The following was heard in open court at
2 2:07 p.m.)

3 THE COURT: Good afternoon, everyone.

4 ALL: Good afternoon, Your Honor.

5 THE COURT: Please be seated. Are we ready
6 to proceed with the plea to the information for Robert
7 J. Thompson?

8 MR. NEFF: We are, Your Honor.

9 MS. MARINARI: Yes, Your Honor.

10 THE COURT: All right. Thank you, Counsel.
11 He will need to be arraigned as well, so we will have
12 Mr. Thompson rise to be sworn in, please.

13 ROBERT J. THOMPSON, Defendant, Sworn.

14 COURTROOM DEPUTY: Please state your full
15 name for the record.

16 THE DEFENDANT: Robert J. Thompson.

17 COURTROOM DEPUTY: Thank you.

18 THE DEFENDANT: Robert John Thompson.

19 COURTROOM DEPUTY: Thank you.

20 THE COURT: Good afternoon, Mr. Johnson.

21 THE DEFENDANT: Thompson.

22 THE COURT: Thompson, excuse me. It's Robert
23 John Thompson, is what you just said?

24 THE DEFENDANT: Correct.

25 THE COURT: I thought so. You just threw me

1 a bit.

2 THE DEFENDANT: It's all right.

3 THE COURT: Would you please be seated? I
4 can conduct my colloquy, that is, my questions and your
5 answers, as you are seated at counsel table next to
6 your attorney.

7 We would like to ask you a number of
8 questions. We want to ask you, first, have you
9 received a copy of the information that charges you
10 with one count of possession of child pornography?

11 THE DEFENDANT: Yes, I have, Your Honor.

12 THE COURT: Did you read it?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. We are going to be
15 talking in detail about this charge, its definition,
16 your possible maximum penalties and many other matters
17 relating to your rights, and you will know them as we
18 go along.

19 So I am going to combine your formal
20 arraignment on this information with your guilty plea
21 colloquy. But I do want you to understand that you
22 have a right to be represented by counsel and, of
23 course, you have counsel, he is seated right next to
24 you.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And, of course, you have retained
2 your counsel, right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. But you also have a right
5 to understand that from the beginning of any
6 prosecution, the beginning of any charges against you,
7 you are entitled to counsel free of charge if you so
8 qualify, and that counsel would be appointed by the
9 Court from a list maintained by the Court called the
10 Criminal Justice Panel. Aren't you, Mr. Neff, on that
11 panel?

12 MR. NEFF: I am on the panel, Your Honor,
13 yes.

14 THE COURT: Yes. But you are here on a
15 private retention basis?

16 MR. NEFF: That is correct.

17 THE COURT: But in that case, if you so
18 qualified, at any time in that prosecution if you felt
19 the need to ask the Court for court appointed counsel,
20 we would certainly consider that, given some
21 information about your needs and your ability to pay,
22 do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. And the rest, I think,
25 we'll cover as we go along. And if we do not, counsel

1 will help the Court. But I think that it is
2 duplicative to arraign and then just have a plea.

3 So let's begin. First of all, I am going to
4 ask you questions to determine whether or not you are
5 competent and capable of entering an informed plea to
6 the charge in this information.

7 Secondly, it is my purpose today to determine
8 and make a finding of fact as to whether or not you are
9 giving up your rights to a trial in this matter
10 voluntarily, knowingly and intelligently.

11 And, therefore, to enable me to have the
12 information I need to make my decisions, I must ask you
13 questions, and your responses must be truthful. They
14 must be accurate. That is what we call credibility.

15 If they are not truthful and accurate, if I
16 can't act on your information, then I cannot do my job
17 properly, and that means that if I suspected that you
18 were intentionally or deliberately being untruthful or
19 evasive, I might not accept your plea. Do you
20 understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: If I don't accept your plea, you
23 have a few options. One of those options is not to go
24 to another judge. So you would have to decide whether
25 or not there would be some way you could resurrect an

1 agreement with the government and perhaps, ask me to
2 reconsider. That is one option.

3 Number two, you have an option to have your
4 case, if I do not accept this plea, taken by the
5 prosecutor's office and submitted to a grand jury so
6 you would be indicted.

7 Under our new court rule, that case would
8 still come back to me. And you could also, after that
9 indictment, be listed for trial, and you would not lose
10 any trial rights. It's simply that I would not accept
11 the plea, and you would lose any benefits of a plea
12 that you currently have, do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. There is another
15 consequence, too, and that is if the government also
16 felt that you were being untruthful or evasive, they
17 may withdraw any plea agreement that they have with
18 you, and you would lose those benefits.

19 Additionally, the government could decide to
20 charge you with crimes, such as false swearing or
21 perjury, and those crimes are separate from the one you
22 face in this information, and they have separate and
23 additional penalties to the ones that you currently
24 face. Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Now, how old are you, sir?

2 THE DEFENDANT: Fifty-four, Your Honor.

3 THE COURT: And how far have you gone in
4 school?

5 THE DEFENDANT: I've got a professional
6 degree. I am a physician.

7 THE COURT: Okay. So with that level of
8 education, you certainly know how to read, write and
9 understand the English language, correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Are you practicing
12 medicine now?

13 THE DEFENDANT: Not at this point, Your
14 Honor.

15 THE COURT: When is the last time you
16 practiced?

17 THE DEFENDANT: October of 2008.

18 THE COURT: And what are you currently doing
19 for employment?

20 THE DEFENDANT: I am not currently employed,
21 Your Honor.

22 THE COURT: What kind of physician were you?

23 THE DEFENDANT: I was a dermatologist.

24 THE COURT: And how long were you engaged in
25 that profession?

1 THE DEFENDANT: Counting my residency, it
2 would have been twenty-six years.

3 THE COURT: Now, have you taken any drugs,
4 any medicine or any pills in the last twenty-four
5 hours?

6 THE DEFENDANT: Yes, ma'am. I have taken a
7 sleeping pill last night and an antidepressant last
8 night that is prescribed by my physician.

9 THE COURT: Do you always take your dosages
10 at night?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you have any effect from
13 the sleeping pill and antidepressant when you take them
14 separately or together that impairs your ability to
15 perceive or understand what you are doing?

16 THE DEFENDANT: Not that I believe, Your
17 Honor, no.

18 THE COURT: What about your comprehension?
19 Does it affect your comprehension in any way?

20 THE DEFENDANT: No, Your Honor. Only
21 immediately after I take the sleeping pill, I sometimes
22 have amnesia for what I read or what sort of music I
23 listened to after I take my sleeping pill, but the next
24 day there is no affect.

25 THE COURT: What is the medication, sir?

1 THE DEFENDANT: Ambien.

2 THE COURT: Ambien for the sleeping pill?

3 THE DEFENDANT: Yes.

4 THE COURT: And the antidepressant?

5 THE DEFENDANT: Is Celexa.

6 THE COURT: And you are treated by a
7 psychiatrist or a psychologist?

8 THE DEFENDANT: Yes, Your Honor, a
9 psychiatrist.

10 THE COURT: And how long have you been so
11 treated?

12 THE DEFENDANT: Since September I believe it
13 was of 2008.

14 THE COURT: Were you ever treated for a
15 mental illness or a chemical addiction prior --

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: -- to that date?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: And were you hospitalized at all?

20 THE DEFENDANT: Prior to that date, Your
21 Honor?

22 THE COURT: Prior to or after?

23 THE DEFENDANT: Prior to that date, I was not
24 hospitalized. In October of 2008, I was in an
25 inpatient treatment facility for sexual addiction.

1 THE COURT: And where was that?

2 THE DEFENDANT: In Chester, Pennsylvania,
3 Keystone.

4 THE COURT: Okay. How long were you there?

5 THE DEFENDANT: Six weeks, Your Honor.

6 THE COURT: And do you continue on an
7 outpatient basis?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Is that separate from your
10 psychiatrist?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And you have a doctor or you
13 attend group?

14 THE DEFENDANT: Well, actually on Mondays, I
15 come down to Philadelphia, I have an individual therapy
16 session, then a forty-five minute long educational
17 session with other sexual addicts, and then I have a
18 group session after that for an hour and a half.

19 THE COURT: So group and individual
20 outpatient?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Any other treatment
23 that you are undergoing, sir?

24 THE DEFENDANT: I do see the psychiatrist
25 once a month to once every three weeks.

1 THE COURT: Anything else?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Are you treated for anything
4 physical?

5 THE DEFENDANT: Not at this time, Your Honor,
6 no.

7 THE COURT: And do you have any conditions,
8 physical, mental or emotional that are not being
9 treated?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: So how would you say your health
12 is generally today?

13 THE DEFENDANT: I would say today my health
14 is excellent.

15 THE COURT: And how do you feel right now?

16 THE DEFENDANT: I am anxious right now, Your
17 Honor, but I believe I prepared myself as well as I can
18 for this day.

19 THE COURT: I think if you weren't a bit
20 anxious or apprehensive, there would be something
21 really wrong with you or you were on too much
22 medication, but I understand what you are saying. All
23 right. Then I think we can continue to proceed.

24 I already told you this, but I want you to
25 understand this explicitly in case I went over it too

1 quickly. Do you understand you have a right to be
2 represented by an attorney at every stage of the
3 proceedings against you?

4 THE DEFENDANT: Yes, I do, Your Honor.

5 THE COURT: And that if you cannot afford the
6 services of an attorney to take your case to trial, one
7 would be appointed for that purpose, as well as to
8 enter a guilty plea, do you understand that?

9 THE DEFENDANT: I do understand, Your Honor.

10 THE COURT: Have you had an ample opportunity
11 to discuss your case with your counsel?

12 THE DEFENDANT: Yes, Your Honor, I have.

13 THE COURT: Now, I am going to ask you,
14 because there are two different counsel listed on your
15 docket sheet, Mr. Neff is one, and Mr. Cedrone is the
16 other. Are they both representing you?

17 THE DEFENDANT: Yes, they are, Your Honor.

18 THE COURT: Yes. And Mr. Cedrone was not
19 available today, as I recall, when we were trying to
20 set this up, but Mr. Neff has been representing you in
21 as much a capacity as Mr. Cedrone?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: So you have discussed your case
24 with Mr. Neff, as well as Mr. Cedrone?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And do you have any questions
2 about your attorneys' representations?

3 THE DEFENDANT: Not at all, Your Honor.

4 THE COURT: And that is attorneys', plural,
5 representations?

6 THE DEFENDANT: No, no, Your Honor.

7 THE COURT: And are you satisfied with each
8 of their representations?

9 THE DEFENDANT: Yes, Your Honor, I am.

10 THE COURT: Thank you. Did you receive a
11 copy of the information?

12 THE DEFENDANT: Yes, Your Honor, I did.

13 THE COURT: And that is the written charge
14 filed by the United States Attorney's Office.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And did you read that
17 information?

18 THE DEFENDANT: Yes, I did, Your Honor.

19 THE COURT: Did you review it with your
20 counsel?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, this charge is, as I said
23 before, possession of child pornography, one count.
24 It's a violation of 18 United States Code, Section
25 2252(a)(4)(B), and it is based on the knowing

1 possession as alleged, of one or more matters, that is,
2 computers and computer hard drives, that contained
3 approximately two hundred visual depictions that have
4 been shipped and transported in interstate and foreign
5 commerce.

6 These depictions involving the use of minors
7 engaging in sexually explicit conduct and the visual
8 depictions were of minors engaging in sexually explicit
9 conduct. That is the charge. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Now, we are going to
12 talk about that more in a moment, but do you understand
13 that this charge is brought by the United States
14 Attorney's Office by filing an information?

15 THE DEFENDANT: Yes, Your Honor, I do.

16 THE COURT: Do you understand that you have a
17 constitutional right to be charged by an indictment of
18 a grand jury?

19 THE DEFENDANT: Yes, I do, Your Honor.

20 THE COURT: But that you can waive that right
21 and consent to be charged by information filed by the
22 United States Attorney?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand that unless you
25 waive indictment, you may not be charged with a felony

1 which this is, of course, unless a grand jury finds by
2 returning an indictment that there is probable cause to
3 believe that a crime was committed and that you
4 committed it?

5 THE DEFENDANT: I understand, Your Honor.

6 THE COURT: Do you understand that if you do
7 not waive the indictment, the government must present
8 this case to the grand jury and request the grand jury
9 indict you?

10 THE DEFENDANT: Yes, I understand, Your
11 Honor.

12 THE COURT: Do you understand that a grand
13 jury is composed of at least sixteen people, but not
14 more than twenty-three people, and that before you may
15 be indicted, at least twelve grand jurors must find
16 that there is such probable cause to believe that you
17 committed the crime with which you are charged?

18 THE DEFENDANT: I understand, Your Honor.

19 THE COURT: Do you understand if you waive
20 indictment by the grand jury, the case will proceed
21 against you on the United States Attorney's
22 information, just as if you were indicted?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: Now, have you discussed the
25 matter of waiving your right to indictment by grand

1 jury with counsel?

2 THE DEFENDANT: I have, Your Honor.

3 THE COURT: Now, has anyone from any source
4 made any threats to you or promises to you of any kind
5 to induce you to waive indictment?

6 THE DEFENDANT: None whatsoever, Your Honor.

7 THE COURT: And with all of this information
8 and knowledge that you have now at present, do you wish
9 to waive your rights to indictment by a grand jury?

10 THE DEFENDANT: Yes, I do, Your Honor.

11 THE COURT: All right. Counsel, do you see
12 any reason why your client should not waive indictment?

13 MR. NEFF: No, Your Honor.

14 THE COURT: All right. Has he executed the
15 form?

16 MR. NEFF: He has, Your Honor. May I
17 approach?

18 THE COURT: Yes, please. Thank you.

19 (Pause in proceedings.)

20 THE COURT: All right. You signed this form,
21 Mr. Thompson?

22 THE DEFENDANT: Yes, I did, Your Honor.

23 THE COURT: The form that was handed to me by
24 Mr. Neff. And you here agree and admit that you have
25 been advised of the nature of the charge and of your

1 rights and waive in open court prosecution by
2 indictment, consenting that the proceeding may be by
3 information instead of by indictment, is that correct?

4 THE DEFENDANT: Yes, it is correct, Your
5 Honor.

6 THE COURT: And along with you and your
7 attorney, Ms. Marinari, on behalf of the government,
8 has also signed and dated today, so I assume this was
9 signed before we got into court today?

10 MR. NEFF: Yes, Your Honor.

11 MS. MARINARI: Yes, Your Honor.

12 THE COURT: Okay. Then what we will do is
13 file your waiver of indictment in the official record
14 and proceed with the rest of the plea.

15 Now, I am going to ask Ms. Marinari to please
16 summarize the terms of the plea agreement.

17 MS. MARINARI: Yes, Your Honor. As the Court
18 has already noted, the defendant has agreed to plead
19 guilty to a one count information charging him with
20 possession of child pornography in violation of 18
21 United States Code, Section 2252(a)(4)(B).

22 He has also agreed to pay the special victim
23 witness assessment in the amount of one hundred dollars
24 before the time of the sentencing. He has agreed in
25 lieu of forfeiture in this case, to abandon to the

1 United States approximately four computers, which are
2 listed in paragraph three of the plea agreement.

3 He also waives any claim under the Hyde
4 Amendment for attorneys fees and other litigation
5 expenses arising out of this investigation and
6 prosecution.

7 In return, at the time of sentencing, the
8 government is free to make whatever sentencing
9 recommendation as to imprisonment, fine and restitution
10 that the government deems appropriate.

11 The government is also free to comment on the
12 evidence, the circumstances of the case and bring to
13 the Court all facts relevant to sentencing. In
14 addition, nothing in the agreement limits the
15 government in its comments or responses to any
16 post-sentencing matters.

17 The defendant has been advised and
18 understands that under the Sex Offender Registration
19 Notification Act, the defendant must register and keep
20 the registration current in each of the following
21 jurisdictions: the location of the defendant's
22 residence; the location of his employment; and if the
23 defendant is a student, which is not the case and will
24 not be necessary, registration will require that the
25 defendant provide information that includes his name,

1 residence address and the names and addresses of any
2 places in which the defendant will be employed.

3 He understands that he must update his
4 registration no later than three business days after
5 any change of name, residence, employment or status.
6 He understands that failure to comply with these
7 obligations subjects him to prosecution for failure to
8 register under federal law, 18 United States Code,
9 Section 2250, which is punishable by a fine or
10 imprisonment or both.

11 The defendant understands that he may not
12 withdraw his plea because the Court declines to follow
13 any recommendation, motion or stipulation by the
14 parties to this agreement. No one has promised or
15 guaranteed to the defendant what sentence the Court
16 will impose.

17 However, pursuant to Section 6(b)1.4 of the
18 sentencing guidelines, the parties have entered into
19 certain stipulations regarding the guidelines, and
20 those are that the parties stipulate and agree that
21 pursuant to United States Sentencing Guideline Section
22 2(g)2.2(a)(1), the base offense level for this offense
23 is 18.

24 The parties further agree that the base
25 offense level is increased by two levels because of the

1 material involved, a prepubescent minor who has not
2 attained the age of twelve years.

3 Further, the parties agree the base offense
4 level is increases by four levels, because the material
5 portrays sadistic or masochistic conduct or other
6 depictions of violence. In addition, the parties agree
7 and stipulate the base offense level is increased by
8 two levels because the offense involved the use of a
9 computer.

10 The parties further agree that the base
11 offense level is decreased by three additional levels,
12 because the offense involved at least one hundred and
13 fifty images, but fewer than three hundred.

14 The defendant also stipulates that he
15 obtained these images using the internet, and that he
16 possessed these images on or about August 14, 2008
17 knowing that they contained such content.

18 The parties further agree that as of the date
19 of this agreement, the defendant has demonstrated
20 acceptance of responsibility for his offense, making
21 him eligible for a two level downward adjustment, as
22 well; that as of the date of this agreement, the
23 defendant has timely notified his intent to plead
24 guilty, thereby permitting the government to avoid
25 preparing for trial, permitting the government and the

1 Court to allocate their resources efficiently,
2 resulting in an additional one level downward
3 adjustment.

4 This plea agreement, Your Honor, also
5 contains an appellate waiver section which essentially
6 says, "In exchange for the undertakings made by the
7 government in entering into this plea agreement, the
8 defendant voluntarily and expressly waives all rights
9 to appeal or collaterally attack his conviction,
10 sentence or any other matter relating to the
11 prosecution, whether it is a direct right to appeal or
12 collateral attack under Section 18 United States Code,
13 Sections 3742, 28 U.S.C. Section 1291 or 28 U.S.C. 2255
14 or any other provision.

15 Notwithstanding the waiver provision, if the
16 government appeals from the sentence, then the
17 defendant may file a direct appeal of his sentence. If
18 the government does not appeal, however, then the
19 defendant may file a direct appeal, but may raise only
20 three matters.

21 First, if the defendant's sentence on any
22 count of conviction exceeds the statutory maximum for
23 that count. Number two, if the Court erroneously
24 departs upward, pursuant to the sentencing guidelines
25 or three, if the Court, exercising the Court's

1 discretion, pursuant to the United States versus
2 Booker, imposes an unreasonable sentence above the
3 final sentencing guideline range determined by the
4 Court.

5 The defendant further waives all rights,
6 whether asserted directly or by a representative, to
7 request or receive from any department or agency of the
8 United States any records pertaining to the
9 investigation or prosecution of this case, including
10 without limitation any records that may be sought under
11 the Freedom of Information Act.

12 Finally, by entering a plea, the defendant
13 waives any and all rights the defendant may have to
14 require DNA testing of any physical evidence in the
15 possession of the government, which in this case is not
16 really applicable. That is basically a summary, Your
17 Honor.

18 THE COURT: Thank you. Now, Mr. Thompson,
19 you were listening carefully.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Are those the terms of the plea
22 agreement as you understand them to be, essentially?

23 THE DEFENDANT: Yes, they are, Your Honor.

24 THE COURT: And did you read the plea
25 agreement that you signed?

1 THE DEFENDANT: Yes, Your Honor, I did.

2 THE COURT: And did you review that plea
3 agreement with your counsel before you signed it?

4 THE DEFENDANT: Yes, I did, Your Honor.

5 THE COURT: And you did sign a plea
6 agreement, because I have a copy of it.

7 MS. MARINARI: Your Honor, I have the
8 original, if the Court would like it.

9 THE COURT: Thank you. I will take it, Ms.
10 Marinari. Thank you. And I see that this plea
11 agreement was actually signed back in November?

12 MS. MARINARI: That is correct, Your Honor.

13 THE COURT: November of 2009?

14 MR. NEFF: Yes, Your Honor.

15 THE COURT: And not only did the defendant
16 sign, but also his attorney, Mr. Neff, as well as Ms.
17 Marinari, and I can't make out the name that signed for
18 the chief of the criminal division.

19 MS. MARINARI: I'll tell you in one second.
20 Oh, that's Albert Glenn.

21 THE COURT: Oh, thank you. Attached to this
22 guilty plea agreement, by the way, is a two page
23 acknowledgment of rights form that you and your
24 attorney also signed.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did you review that before you
2 signed it?

3 THE DEFENDANT: Yes, I did review that.

4 THE COURT: Because I will spend some time
5 shortly reviewing the same material that is in the
6 acknowledgment of rights form, all of the rights that
7 you give up when you plead guilty. But let me ask you
8 this question. Before you signed this plea agreement,
9 did anyone threaten you, force you or coerce you?

10 THE DEFENDANT: No, Your Honor, no one did.

11 THE COURT: Did anyone make promises to you,
12 any kind of promises, other than what itself is
13 contained in this agreement?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: So there were no outside
16 inducements, no promises, no bargains that are not of
17 record here?

18 THE DEFENDANT: No, Your Honor, there were
19 not.

20 THE COURT: And what is said in this plea
21 agreement, what is written, and what you signed, is
22 this all that there is for me to know about what you
23 are admitting to?

24 THE DEFENDANT: Yes, I believe so, Your
25 Honor.

1 THE COURT: Okay. Then we are going to file
2 this of record and proceed with the rest of the plea.

3 Now, do you understand that when you plead
4 guilty you give up the right to challenge the
5 information that was returned against you, as well as
6 anything that preceded it in the nature of the
7 investigation or the charges?

8 THE DEFENDANT: Yes, Your Honor, I
9 understand.

10 THE COURT: All right. Do you understand
11 that you are entitled to plead not guilty and proceed
12 to trial?

13 THE DEFENDANT: I understand, Your Honor.

14 THE COURT: Do you understand you have a
15 right to be tried by a jury or a judge, without a jury,
16 if you do not plead guilty?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And do you understand that,
19 through your attorney, you can participate in selecting
20 a jury for a trial?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: That jury would be composed of
23 twelve persons selected from the community, and all
24 twelve of the jurors would have to agree, that is they
25 must render a unanimous verdict or you would not be

1 convicted, do you understand that?

2 THE DEFENDANT: I understand, Your Honor.

3 THE COURT: Do you also understand that at
4 trial, you are presumed to be innocent, and it is the
5 government's burden, and only the government's burden
6 to prove your guilt, and they must prove your guilt
7 beyond a reasonable doubt, which is the highest
8 standard of proof in any legal system? Do you
9 understand that?

10 THE DEFENDANT: I do understand, Your Honor.

11 THE COURT: And they can only use competent
12 evidence, and you are on the other hand presumed to be
13 innocent, therefore, you need do nothing to prove your
14 own innocence. That is not your obligation, it is not
15 your burden. Do you understand that?

16 THE DEFENDANT: I understand, Your Honor.

17 THE COURT: Furthermore, do you understand
18 that during the course of a trial, witnesses for the
19 government must come into the courtroom and testify in
20 your presence?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And you have a right to confront
23 those witnesses by your attorney cross-examining them
24 and objecting to their evidence, do you understand
25 that?

1 THE DEFENDANT: I understand, Your Honor.

2 THE COURT: Now, do you also understand that
3 at trial through counsel you may also present witnesses
4 and offer evidence but, again, you are never compelled
5 to do so?

6 THE DEFENDANT: I understand, Your Honor.

7 THE COURT: Do you also understand that at
8 trial while you have a right to testify if you choose
9 to do so, you also have an absolute right not to
10 testify, and no inference or suggestion of guilt may
11 be drawn from that fact if you chose not to testify,
12 and I would so instruct the jury? Do you understand
13 that?

14 THE DEFENDANT: I understand, Your Honor.

15 THE COURT: Do you also understand that at
16 trial, you have a right to subpoena, that is, use a
17 court order to compel witnesses to attend court to
18 testify for you? That's what a subpoena is, it's a
19 court order, and you can use that as well as the
20 government can use that, do you understand that?

21 THE DEFENDANT: I understand, Your Honor.

22 THE COURT: And the witnesses that you could
23 produce could also include character witnesses, whose
24 testimony alone could raise -- well, I'm not sure if
25 that is the law anymore that testimony alone could

1 raise a reasonable doubt. But character testimony can
2 be considered, as well as any other evidence to raise a
3 reasonable doubt, do you understand that?

4 THE DEFENDANT: I understand, Your Honor.

5 THE COURT: All right. Do you understand
6 that when you plead guilty, you give up the right to
7 challenge the manner in which the government obtained
8 its evidence that it intends to use to secure your
9 conviction of guilt?

10 The kind of evidence I am talking about are
11 confessions or admissions that you may have made,
12 surveillance evidence, video evidence, in this case,
13 the forensic evidence, documents of any kind, printouts
14 from the computer, the hard drive itself, any
15 transmissions, anything at all that the government has
16 acquired in the course of their investigation and
17 wishes to use as evidence to prove your guilt, once you
18 plead guilty, you can no longer contest that evidence
19 being admissible in court, do you understand that?

20 THE DEFENDANT: Yes, I do, Your Honor.

21 THE COURT: Do you also understand that at
22 all times you have an absolute right not to incriminate
23 yourself? It isn't just that you have a right not to
24 testify. It's also that you can't be forced to, in any
25 way, incriminate yourself. Not your lawyer, not the

1 government, not this Court can force you to take the
2 witness stand and give evidence, do you understand
3 that?

4 THE DEFENDANT: I understand, Your Honor.

5 THE COURT: Do you also understand that at
6 all times your attorney argues on your behalf and
7 against the government's case?

8 THE DEFENDANT: Yes, Your Honor, I do.

9 THE COURT: Now, if you proceeded to trial
10 instead of pleading to an information, and then the
11 information was turned into an indictment by a grand
12 jury, and you proceeded to trial, it is a couple of
13 steps away from where you are now, but if you decided
14 that that is what you wanted to do, and you went to
15 trial, and then you were convicted you would be able to
16 appeal that guilty verdict to the higher court, that is
17 the Third Circuit Court of Appeals, do you understand
18 that?

19 THE DEFENDANT: I understand, Your Honor.

20 THE COURT: Do you understand that you would
21 have an attorney represent you in that appeal, free of
22 charge?

23 THE DEFENDANT: I understand, Your Honor.

24 THE COURT: And that court might reverse your
25 conviction?

1 THE DEFENDANT: Yes, Your Honor, I
2 understand.

3 THE COURT: Do you understand that there are
4 limited grounds to appeal from a guilty plea, and those
5 are usually encompassed in the sentence that I would
6 impose, as well as errors in this proceeding or the
7 sentencing proceeding? Do you understand?

8 THE DEFENDANT: I understand, Your Honor.

9 THE COURT: Because there is no appeal from
10 an admission of guilt otherwise, do you understand
11 that?

12 THE DEFENDANT: I understand, Your Honor.

13 THE COURT: And there is no appeal from a
14 trial, because you are not having a trial.

15 THE DEFENDANT: I understand, Your Honor.

16 THE COURT: All right. So do you understand
17 then, by pleading guilty, you are giving up your right
18 to appeal from any conviction after trial?

19 THE DEFENDANT: I do understand, Your Honor.

20 THE COURT: All right. But in your case,
21 even with the limitations by giving up your rights to a
22 trial and giving up your right to appeal from the trial
23 verdict and the conviction after trial, do you
24 understand that your plea agreement contains more
25 specific additional waivers and limitations of your

1 appellate rights?

2 THE DEFENDANT: Yes, I do, Your Honor.

3 THE COURT: And those were read to you by Ms.
4 Marinari, and you read them when you signed the plea
5 agreement and reviewed it with Mr. Neff, right?

6 THE DEFENDANT: Yes, I did, Your Honor.

7 THE COURT: All right. Let me tell you what
8 you would normally be entitled to if you had not agreed
9 to waive those particular rights.

10 Normally, you would have a right to appeal
11 any sentence I would impose on you to a higher court,
12 which could then modify your sentence, set aside your
13 sentence or make me resentence you. The government has
14 that same right of direct appeal.

15 You would also have a right to bring a later
16 proceeding, and we call that a collateral attack, by
17 filing a habeas corpus motion, and you would file that
18 motion in this court to either vacate, set aside or
19 correct your sentence under normal conditions, do you
20 understand that?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: So your guilty plea today, that
23 is, your guilty plea agreement, greatly limits your
24 rights to appeal or to use a later proceeding like the
25 collateral attack and habeas corpus to challenge your

1 conviction, your sentence or any other matter.

2 THE DEFENDANT: Yes, I understand, Your
3 Honor.

4 THE COURT: According to your plea agreement,
5 you are voluntarily and expressly waiving all rights to
6 appeal or collaterally attack your conviction, your
7 sentence or any other matter, is that correct?

8 THE DEFENDANT: That is correct, Your Honor.

9 THE COURT: And other than constitutional
10 claims, which the case law says cannot be waived, you
11 would be limited to four ways to appeal.

12 One, if the government appeals from my final
13 sentence, then you will have your same right of direct
14 appeal. But if the government chooses not to appeal,
15 then you are limited to three areas only.

16 I am repeating them because even though they
17 are in your agreement, even though Ms. Marinari quoted
18 them accurately, I think it is important enough for you
19 to hear it one more time. Okay?

20 You can appeal if I sentence you on this
21 count, you have one count in your information, and my
22 sentence exceeds or goes above the statutory maximum
23 for that count. I hope I don't start making those
24 mistakes after thirty-two years in law. Okay. So I
25 don't think you are going to get a chance to use that

1 particular section.

2 Number two, if I depart upward from the
3 advisory sentencing guideline range, and I do so
4 because I committed a legal error, I made a ruling as
5 a matter of law, and it is incorrect. That could
6 happen.

7 Or if I sentence you above the advisory
8 guideline range, and I do so because it is an
9 unreasonable sentence, I have made an abuse of my
10 discretion, I have made a mistake in my judgment that
11 impacts not only my right as a trial judge to impose a
12 fair and reasonable sentence, but also because I have
13 violated the premise of the sentencing statute, that
14 is, 18 United States Code, Section 3553, which tells a
15 judge how to sentence, and shows us which factors we
16 are supposed to consider.

17 Now, one of those factors is the advisory
18 sentencing guideline range. We must consider it. I
19 have to compute it. I have to do it accurately or I
20 commit that legal error, but then I have to use that
21 information. It doesn't mean I have to adopt it as the
22 sentence, but I must recognize it and use it as a piece
23 of advice.

24 I also have other pieces of advice and
25 information that I must use. One of them is your

1 personal history and background, your personal
2 characteristics. The other is the case itself and its
3 serious nature. Of course, this is serious or you
4 wouldn't be here, and it is very serious in any event.

5 And I have to recognize the effect on the
6 community, the public and others. I also have to
7 consider how your rehabilitation or correctional
8 treatment, if any, is necessitated and implemented. I
9 must consider how to promote respect for the law and
10 deter this kind of crime.

11 So there are many considerations that I have
12 that are clearly outlined in the Sentencing Statute.
13 To put them all together, if I impose a sentence after
14 I do that and it is above the advisory guideline range,
15 then it may be an unreasonable exercise, and you may
16 then appeal. All right?

17 THE DEFENDANT: Yes, I understand, Your
18 Honor.

19 THE COURT: Now, other than that, you waive
20 all other rights to appeal, do you understand that?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: Okay. Now, if you plead guilty,
23 and I accept your plea, do you understand that you will
24 waive, and by that you give up the right forever to
25 have a trial of any kind in this matter, as well as the

1 other rights we have been discussing?

2 THE DEFENDANT: I understand, Your Honor.

3 THE COURT: And if you plead guilty, do you
4 understand that I will ask you questions about what you
5 specifically did in order to satisfy myself that you
6 are guilty as charged?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: If you plead guilty today, I will
9 then enter a judgment of guilt and sentence you at a
10 later date, and I will sentence you in accordance with
11 the sentencing statute, as I just explained to you.

12 But when I have to consult the sentencing
13 guidelines, I will do so only after a presentence
14 report has been prepared by a member of the United
15 States Probation Department.

16 They will put together all of this
17 information that I rely on. You can add to that. You
18 cooperate and participate in that process, so does the
19 government. But if you have more information to
20 present at sentencing, I certainly will listen to it.

21 But I never compute guidelines until that
22 report is ready, and you and the government have had an
23 opportunity to make corrections, deletions,
24 modifications, additions to the information that is
25 contained in it.

1 If it is not changed to your satisfaction or
2 the government's, each of the parties is entitled to
3 pose objections, which I must rule upon before I decide
4 what the advisory guideline range is, do you understand
5 that?

6 THE DEFENDANT: I understand, Your Honor.

7 THE COURT: So much has to be done before I
8 can even contemplate what kind of a sentence you would
9 be receiving. And as far as I can see, there is no
10 agreement, no term of this guilty plea agreement that
11 recommends any particular sentence, is that correct?

12 THE DEFENDANT: That is what I understand,
13 Your Honor, yes.

14 THE COURT: And as far as I can tell, there
15 are no promises either being made to you as to what
16 sentence you will receive?

17 THE DEFENDANT: That is true, Your Honor.

18 THE COURT: So without an expectation of a
19 specific sentence or even a recommendation for a
20 sentence, because I don't see one here in the plea
21 agreement, and certainly no promise of one, if I
22 sentence you, and it is otherwise a legal sentence, you
23 will not be able to withdraw your plea because you
24 thought that you were entitled to or promised some
25 other type of sentence or some other sentence, do you

1 understand that?

2 THE DEFENDANT: I understand that, Your
3 Honor.

4 THE COURT: All right. Now, I take it by a
5 plea to an information, that you have no prior record?

6 THE DEFENDANT: That is correct, Your Honor.

7 THE COURT: So we don't have to worry about a
8 prior sentence being violated here, do we, Counsel?

9 MR. NEFF: No, Your Honor.

10 THE COURT: All right. And I am pretty sure,
11 but I will ask anyway, are you a citizen of the United
12 States?

13 THE DEFENDANT: Yes, I am, Your Honor.

14 THE COURT: Very well. So there are no
15 deportation issues either.

16 Now, I am going to turn back to the
17 government and ask Ms. Marinari to please define this
18 crime that you are pleading guilty to and establish the
19 definition by its essential elements, which if you went
20 to trial, Mr. Thompson, the government would have to
21 prove beyond a reasonable doubt to a judge or a jury
22 before you would be convicted.

23 MS. MARINARI: Your Honor, in order to
24 establish this crime of possession of child
25 pornography, the government must prove the following

1 four elements.

2 First, that the defendant knowingly possessed
3 one or more books, magazines, periodicals, films,
4 videotapes or other matter which the defendant knew
5 contained a visual depiction of a minor engaged in
6 sexually explicit conduct.

7 Secondly, that the defendant knew the visual
8 depiction contained in the videotape or other matter
9 was of a minor engaged in sexually explicit conduct.

10 And thirdly, the defendant knew that
11 production of such a visual depiction involved use of
12 the minor in sexually explicit conduct.

13 And lastly, the visual depiction had been
14 either mailed, shipped or transported in interstate or
15 foreign commerce, or was produced using material that
16 had been mailed, shipped or transported in interstate
17 or foreign commerce by a computer or other means.

18 THE COURT: Thank you.

19 MS. MARINARI: You're welcome.

20 THE COURT: Do you understand the definition
21 of the crime to which you are pleading guilty, sir?

22 THE DEFENDANT: Yes, I do, Your Honor.

23 THE COURT: All right. Now, Ms. Marinari,
24 would you also state the penalties that he faces?

25 MS. MARINARI: Certainly, Your Honor.

1 THE COURT: Thank you.

2 MS. MARINARI: This crime carries the
3 following maximum sentence. Up to ten years
4 imprisonment, five years up to a lifetime of supervised
5 release, a two hundred fifty thousand dollar fine, a
6 one hundred dollar special assessment.

7 In addition, the Court must order all
8 property used or intended to be used to commit or
9 promote this offense and all images possessed in
10 connection with this matter to be forfeited. In this
11 case, Your Honor, the defendant has agreed to forfeit.

12 THE COURT: Do you understand the sentence
13 that you are facing?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: All right. And I think it is
16 important for you to understand supervised release,
17 because when a jail term may be imposed and it is of
18 sufficient consequence, it must be followed by
19 supervised release, which is while it sounds like it
20 may be like probation or parole, it is neither.

21 It is supervised release in the federal
22 system, and it comes with terms and conditions of
23 behavior that must be followed. There are rules that
24 dictate to you all of the conditions that you must
25 comply with.

1 If there are violations of those conditions,
2 Mr. Thompson, you face coming back into court. If you
3 are found to be in violation of those conditions, some
4 of which are standard conditions that everyone in the
5 Eastern District of PA is assessed and others that are
6 special, and you will have certainly some special
7 conditions in your case, if you are found to be in
8 violation of the terms of your supervised release, you
9 could be sentenced to an additional term of prison.

10 So in your case, this is a Class B -- is it a
11 Class B or Class A?

12 MS. MARINARI: Ten years, Judge. I think
13 this was a Class C.

14 THE COURT: And a Class C would mean that in
15 supervised release, he is facing -- I don't think that
16 is in the plea agreement, is it?

17 MS. MARINARI: Yes, Your Honor, it is in the
18 plea agreement.

19 THE COURT: It is?

20 MS. MARINARI: And I think because it is
21 child pornography, that it is a special term of
22 supervised release. It is at least five years up to
23 a lifetime, and I believe that is in the plea
24 agreement.

25 THE COURT: It is on page three, you are

1 absolutely right. On page three of your plea agreement
2 in paragraph six, it stipulates here that you
3 understand that supervised release may be revoked if
4 its terms and conditions are violated. And when it is
5 so revoked, the original term of imprisonment may be
6 increased by two years per count of conviction, so in
7 your case, two years.

8 If you commit a specified child exploitation
9 offense while on supervised release, an additional
10 period of imprisonment shall be imposed of at least
11 five years.

12 THE DEFENDANT: Okay.

13 THE COURT: And that is what is different
14 about this kind of crime when you are on supervised
15 release, do you understand that?

16 THE DEFENDANT: I understand, Your Honor.

17 THE COURT: That was well worth repeating for
18 all of our sakes. All right.

19 Now, Ms. Marinari, on behalf of the
20 government, would you please summarize the facts upon
21 which this plea is based?

22 MS. MARINARI: Yes, Your Honor. Your Honor,
23 this case was initiated back on August 17th, 2006. FBI
24 Special Agent Steve Forrest in Buffalo conducted an
25 undercover investigation utilizing the America On Line,

1 and he was investigating individuals involved in the
2 transmission and receipt of child pornography.

3 On that date he located and entered a chat
4 room entitled, "Special Interest, Fathers Chatting."
5 Special Agent Forrest sent a message to the chat room
6 indicating that he had videos to trade.

7 Special Agent Forrest received an instant
8 message from an individual using the AOL screen name,
9 HJIMBOB1. The two discussed the trading of images of
10 children engaged in sexual activity. During the online
11 contact, HJIMBOB1 stated he was a forty-six year old
12 male, that he had been married for twenty-three years,
13 and that he had a sixteen year old son.

14 Special Agent Forrest received three movie
15 files via e-mail from this individual. The movies
16 contained minors engaging in sexual activity with adult
17 males. By subpoena, Special Agent Forrest obtained the
18 AOL account of HJIMBOB1, and identified that subscriber
19 as an individual identified here as J.H. from Ohio.

20 On October 4, 2006, a court authorized search
21 warrant was executed at J.H.'s residence, and multiple
22 items were seized, including three computers and
23 multiple compact disks and floppy disks. Later, J.H.
24 was interviewed and admitted to trading child
25 pornography, including pictures and movies.

1 He explained he would enter the chat room and
2 either initiate a request or answer another user's
3 request to trade. He used AOL Instant Messenger to
4 communicate with other users interested in child
5 pornography, and then he would e-mail back and forth
6 pictures or movies with these other users.

7 The FBI's review of e-mail messages from
8 J.H.'s AOL account showed that on September 24th, 2006,
9 J.H. received an e-mail from TUNALIC@aol.com, with the
10 subject line, "Re: Check out super child models for a
11 rainy day." There were two photos attached to this
12 e-mail considered to be child erotica.

13 On November 20, 2006, agents issued a
14 subpoena to AOL for subscriber information for that
15 screen name, TUNALIC. The records show that the
16 account was registered to the defendant, Robert
17 Thompson, at 6184 Putner Drive, Allentown, listing his
18 telephone number.

19 On July 12, 2007, the FBI received additional
20 information from the Cincinnati FBI office which
21 provided a CD-ROM of additional evidence of the trading
22 of child pornography between J.H. and TUNALIC,
23 identified as the screen name for the defendant.

24 Agent Simon received the CD and found that on
25 September 4th, 2006, between 1:15 and 11:51 a.m.,

1 e-mails had been sent from TUNALIC@AOL.com to
2 HJIMBOB1@AOL.com.

3 Each e-mail contained child pornography.
4 Seven of the eight attached photos depicted minor
5 females between seven and twelve years old, with their
6 unclothed vaginal area exposed in various posed
7 positions. One of the photos depicted a minor wearing
8 only underwear posed on a bed.

9 On July 27th, 2007, Agent Simon received
10 additional information from the FBI's office in
11 Martinsburg, West Virginia regarding another AOL
12 account, M4TSUMTHIN.

13 Included was a copy of an e-mail dated March
14 1, 2003, with an attached print copy of file, "Brothers
15 playtime.art", sent from MEBICD to M4TSUMTHIN and
16 others. These images have been previously identified
17 as belonging to the known child pornography series
18 "Kate DV" from the Moscow City Police Department.

19 The agent issued a subpoena to AOL for
20 subscriber information for this screen name,
21 M4TSUMTHIN. The records show the account was
22 registered to the defendant, Robert Thompson, in
23 Allentown.

24 Subsequent to obtaining that information,
25 Your Honor, in August of 2008, FBI Agent Simon left a

1 business card requesting that the defendant call him.
2 An interview was scheduled for August 14th, and on that
3 date the defendant was interviewed at his residence by
4 Agent Simon.

5 After an initial denial, the defendant
6 admitted to the possession and dissemination of images
7 of children engaged in sexually explicit conduct via
8 the internet. He specifically admitted using computers
9 and the internet to collect, view and disseminate
10 hundreds of images of child pornography.

11 He said that he was the sole user of three
12 AOL e-mail accounts, including TUNALIC, as well as
13 M4TSUMTHIN. The defendant describes his activity as an
14 AOL addiction that began as an interest in viewing
15 adult pornography, but changed to child pornography
16 within the last five to ten years.

17 He confirmed that he had a sexual interest in
18 females thirteen years old and older, with his
19 preference being females in the thirteen to fourteen
20 year old range.

21 He stated he engaged in this activity late at
22 night and on weekends, and after logging into AOL, he
23 went to the site, "Member-sponsored sites" and then to
24 "Special Interests," where there were many different
25 subcategories that he could choose.

1 Once in the chat room, he engaged in
2 dialogues to find other traders, then communicated
3 directly with them via AIM and then sent and received
4 images through AOL e-mail.

5 He stated that he would store the images in
6 hidden folders on his computer. He estimated he may
7 have received and saved about two hundred images of
8 child pornography, but had not done so since December
9 of 2007.

10 During this interview, the agents were given
11 consent by the defendant to search his computers. He
12 led the agents to two Dell desk top computers located
13 in his residence.

14 When Agent Simon attempted to conduct a
15 preliminary examination and ran the FBI pre-search
16 software on the desk top computer, he found a disk
17 labeled "Drug Drive Scribe Scrubber" inside the DVD-ROM
18 drive.

19 Defendant admitted that after he became aware
20 that the FBI wanted to speak with him, he went to Best
21 Buy and purchased the Drive Scrubber disk for
22 twenty-nine dollars. He said he used the scrubbing
23 software on both Dell desk top computers.

24 When questioned further about any other
25 evidence he may have hidden, the defendant admitted to

1 the existence of two other computers. He stated that
2 he had placed a suitcase in his neighbor's garage. The
3 suitcase contained a Dell laptop computer and a Dell
4 desk top computer.

5 He agreed to retrieve the suitcase and
6 eventually did that and gave them to Agent Simon. He
7 said he did not use the Drive Scrubber on these
8 computers. He also gave the FBI one external hard
9 drive and a 1.44 floppy disk.

10 Upon examination of the defendant's computers
11 after they were provided to the FBI, Agent Simon found
12 at least two hundred images depicting child pornography
13 and, in particular, approximately forty depicted
14 intercourse prepubescent, and approximately eight
15 depicted intercourse pubescent. Approximately four
16 depicted masturbation prepubescent. Approximately
17 three depicted masturbation pubescent.

18 Approximately eight depicted children engaged
19 in sadomasochistic conduct. And lastly, approximately
20 sixty-five showed lascivious exhibition prepubescent,
21 and approximately ninety-nine showed lascivious
22 exhibition pubescent.

23 All of these images have been distributed in
24 interstate or foreign commerce and/or the materials
25 used to create the images have been shipped in

1 interstate or foreign commerce. That's the summary,
2 Your Honor.

3 THE COURT: Thank you. Was the search
4 conducted on August 14th or thereabouts of 2008?

5 MS. MARINARI: Your Honor, the search was
6 conducted later than that date.

7 THE COURT: I am just trying to make some
8 sense of the statement that he initially gave Agent
9 Simon that he hadn't received images since 2007 of
10 December, but there were two that had not been
11 scrubbed, right, two computers?

12 MS. MARINARI: That is correct, Your Honor,
13 and we did get those.

14 THE COURT: He was still in possession of
15 them then on the date that is charged in the
16 information?

17 MS. MARINARI: No, Your Honor. All of the
18 computers were taken on that day, August 14th, back in
19 2008 from the defendant.

20 THE COURT: Okay.

21 MS. MARINARI: It was subsequent to that,
22 within approximately two months of that, that the
23 analysis was conducted. There is somewhat of a backlog
24 in terms of these analyses being done.

25 THE COURT: That doesn't bother me. I just

1 wanted to know when they were preserved, because that
2 is the date.

3 MS. MARINARI: They were taken at that time,
4 Your Honor.

5 THE COURT: Okay. August 14, 2008 makes
6 sense to me now. All right. Then I am going to turn
7 to you, Mr. Thompson, and ask you, that was a detailed
8 summary, but it is necessary in this case, and I wanted
9 to know if you agreed that the government has
10 accurately summarized the facts of your case?

11 THE DEFENDANT: Yes, they have, Your Honor.

12 THE COURT: And do you agree and admit to
13 committing the acts that I was just told?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And then do you agree that you
16 are guilty of this offense?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: I told you I would ask you
19 questions, but there is something that I have to ask
20 you now, instead of waiting until sentencing. You said
21 you had stopped receiving and saving images of child
22 pornography December, 2007?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Why?

25 THE DEFENDANT: My AOL account ended in

1 December of 2007, and it was through AOL that all of
2 this actually occurred, and I didn't get any other of
3 those types of services. I didn't want any more social
4 kind of stuff like that where chat rooms would be
5 available.

6 THE COURT: So you had no more internet
7 access?

8 THE DEFENDANT: I still had the internet, but
9 I didn't have any access to chat rooms.

10 THE COURT: There is no access to chat rooms
11 on other services? AOL is the only one that you can do
12 chat rooms?

13 THE DEFENDANT: Well, I didn't go looking,
14 Your Honor. I was only familiar with AOL, and after my
15 AOL account ended in December, I was in a way relieved,
16 but I didn't go looking for any other chat rooms at
17 that point.

18 THE COURT: Okay. Now, I don't know that
19 there is a named victim in this type of prosecution
20 that needs to be notified?

21 MS. MARINARI: Your Honor, that is actually
22 handled through both the FBI and my office. So that is
23 something that would be reviewed. At the moment, I
24 don't know of any, but I will be advised of that prior,
25 and I will advise the probation office.

1 THE COURT: All right. Thank you. If there
2 were particular named victims, they would be invited to
3 participate in the sentencing phase here by
4 transmitting to the Court or by appearing themselves
5 any position they may have as to impact on themselves
6 or how they feel about sentencing.

7 Now, the Court is not compelled to listen to
8 them or adopt their views, and their views may not
9 agree with the government's position. The government
10 doesn't need to adopt their views, but we all listen in
11 the sense that they are invited to participate and
12 express themselves, and also if they don't care to do
13 that, observe. Do you understand that?

14 THE DEFENDANT: I understand that, Your
15 Honor.

16 THE COURT: All right. So have you then
17 discussed with your attorneys the charge, your right to
18 contest this charge, as well as the penalties that you
19 face?

20 THE DEFENDANT: Yes, I have, Your Honor.

21 THE COURT: Do you understand that by
22 pleading guilty and by waiving the rights we have been
23 discussing, you cannot later come to this or any court
24 and claim that your rights were violated or that you
25 are not guilty?

1 THE DEFENDANT: I understand, Your Honor.

2 THE COURT: Did anyone threaten you, coerce
3 you or force you in any way to plead guilty today?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Has any other consideration or
6 plea agreement been entered in this case, other than
7 what is already stated in your written guilty plea
8 agreement and here on this record?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Then has your decision to enter
11 this plea of guilty been made of your own free will?

12 THE DEFENDANT: It has, Your Honor.

13 THE COURT: Having heard from me what your
14 rights are if you plead not guilty and go to trial, and
15 what may occur if you plead guilty and proceed to
16 sentencing at a later date, do you still wish to give
17 up your rights to a trial and plead guilty?

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: And do either counsel have any
20 doubt as to Mr. Thompson's competence to enter this
21 plea?

22 MR. NEFF: No, Your Honor.

23 MS. MARINARI: I have no doubt, Your Honor.

24 THE COURT: And are each counsel satisfied
25 that his willingness to plead guilty is voluntary and

1 his guilty plea is made with his full understanding of
2 the nature of the charge, the maximum possible
3 penalties and his legal rights to contest this charge?

4 MR. NEFF: I am satisfied, Your Honor.

5 MS. MARINARI: Yes, I am satisfied.

6 THE COURT: And are each attorney satisfied
7 that his plea is not based on any plea agreement or
8 term except as disclosed on this record?

9 MR. NEFF: Yes, Your Honor.

10 MS. MARINARI: Yes, Your Honor, I am
11 satisfied.

12 THE COURT: And are each counsel satisfied
13 that there is a sufficient factual basis to support the
14 elements of the offense in this plea?

15 MR. NEFF: There is, Your Honor.

16 MS. MARINARI: Yes, Your Honor.

17 THE COURT: Then I will ask counsel, do you
18 have any additional questions to pose?

19 MR. NEFF: None from the defense, Your Honor.

20 MS. MARINARI: I have no additional
21 questions, Your Honor.

22 THE COURT: Thank you. Mr. Thompson, you
23 will have an opportunity to address this Court at the
24 time of sentence, but you also have an opportunity to
25 address the Court today, if you so wish. Would you

1 like to say anything, sir?

2 THE DEFENDANT: Well, Your Honor, I wasn't
3 prepared to say anything today.

4 THE COURT: Well, you are not forced to,
5 either.

6 THE DEFENDANT: I might better wait, I think.

7 THE COURT: Good, then you can prepare
8 something.

9 THE DEFENDANT: There is a lot I would like
10 to say, but I had better wait. Thank you for the
11 opportunity.

12 THE COURT: You are welcome. We will then
13 make the necessary finding on this record.

14 We do find that Mr. Thompson's waiver of
15 indictment is knowing, intelligent and voluntary, and
16 we accept his waiver, and we find then that he is
17 knowingly, intelligently and voluntarily waiving his
18 right to indictment by grand jury.

19 And I am going to ask you to rise. My clerk
20 will take your plea.

21 COURTROOM DEPUTY: Under Criminal Docket
22 Number 2009-797, you have been charged with possession
23 of child pornography under 18 U.S.C. Section
24 2252(a)(4)(B), how do you plead, guilty or not guilty?

25 THE DEFENDANT: I plead guilty.

1 THE COURT: Thank you. Now, please be seated
2 one more time, and I will enter my final findings that
3 are necessary for me to actually accept any plea. In
4 this case, I do find the defendant competent and fully
5 capable of entering an informed plea to the charge in
6 the information.

7 We also find that his plea of guilty is
8 knowing and voluntary, is not based on force or threats
9 of any kind, nor is it based on any promises except
10 those explicitly stated in his written plea agreement,
11 and that has been disclosed on this record.

12 We further find that there is an independent
13 factual basis to support each of the essential elements
14 of the offense to which he is entering this plea, and
15 that he understands what his charge is, he understands
16 his legal rights to contest that charge, and he
17 understands the maximum possible penalties that he
18 faces. There are no mandatory minimum penalties
19 implicated here?

20 MR. NEFF: There are not, Your Honor.

21 MS. MARINARI: No, Your Honor.

22 THE COURT: We further find that Mr. Thompson
23 understands he is waiving his right to a trial, as well
24 as limiting his right to appeal, and this Court accepts
25 his plea of guilty to the information, and will order

1 the presentence report be prepared by the probation
2 department.

3 I think it is necessary to complete the
4 arraignment process. He has been notified of his
5 charges and his rights, and he has then had his plea to
6 an information accepted by accepting his waiver of
7 indictment. So we are through all the processes except
8 for two, to set the sentencing date and to arrange for
9 release status. So we need to do that.

10 Let's address that now. I have a report from
11 the United States Pretrial Services, which I received
12 by fax and then in hard copy. Have you all reviewed
13 that?

14 MR. NEFF: Yes, Your Honor.

15 MS. MARINARI: Yes, Your Honor.

16 THE COURT: All right. Is there any position
17 that the government has as to his release that they
18 would like to identify for the Court at this time?

19 MS. MARINARI: No, Your Honor. I am
20 satisfied based on the conduct in this case and what
21 has occurred prior to even the filing of the charges.
22 At this point, we are recommending fifty thousand
23 dollars OR bail to the Court with conditions.

24 THE COURT: All right. And one of those
25 conditions should be that he relinquish his passport.

1 MR. NEFF: He has that with him, Your Honor,
2 and it will be done today.

3 THE COURT: All right.

4 MS. MARINARI: We are also recommending, Your
5 Honor, that he report to Pretrial, as they direct him
6 to do, and that his travel is restricted. In this
7 case, I know it was initially the Eastern District, but
8 Mr. Neff brought to my attention that he has, I
9 believe, a relative in the Middle District, so that it
10 would be extended to the Eastern and the Middle
11 District of Pennsylvania.

12 MR. NEFF: He cares for his mother who is
13 eighty-nine, Your Honor.

14 THE COURT: Very well.

15 MS. MARINARI: Obviously, Your Honor, we
16 would ask him to surrender and not obtain any
17 additional firearms, if he has any, as well, Your
18 Honor, that he refrain from any contact with minors
19 other than family members, unless supervised with other
20 adults present, and as well that he refrain from
21 computer usage, and that he allow the FBI, if they deem
22 necessary, access to those computers in his household.

23 THE COURT: Any disagreement with any of
24 these conditions, Mr. Neff?

25 MR. NEFF: None, Your Honor.

1 THE COURT: The no computer usage, I have to
2 sign on to, even though the latest Third Circuit
3 decisions, I think, a blanket disallowance of computer
4 usage is not appropriate in the long-term, this is the
5 short-term.

6 MR. NEFF: Understood, Your Honor.

7 THE COURT: We're pretrial here in terms of
8 presentence, and it is permitted, and I am going to bar
9 any computer usage for now.

10 MR. NEFF: Yes, Your Honor.

11 THE COURT: We need to know a lot more about
12 Mr. Thompson before we consider how to properly
13 implement a controlled computer usage or not at all,
14 and so I think that he should surrender his passport
15 today.

16 I will restrict his travel to the Eastern
17 District of Pennsylvania and to the Middle District,
18 but only to care for his aging mother. And any other
19 travel must receive approval and advance permission by
20 the Pretrial Services department, and he must surrender
21 any firearms and not obtain any.

22 You should be advised that once you are
23 sentenced, you will be a convicted felon and not able
24 to obtain any firearms or possess them, not legally,
25 and we know that you will not even consider that.

1 We will also order that the FBI may continue
2 to monitor any computers owned within his household.
3 Do you have any at home?

4 THE DEFENDANT: Yes, Your Honor, we do. My
5 wife needs one for her work, and my son's schoolwork is
6 oftentimes computer-based.

7 THE COURT: And how old is your son?

8 THE DEFENDANT: Eighteen.

9 THE COURT: Okay. Then what we are doing is
10 keeping you off of it and allowing the FBI access to
11 make sure you are off.

12 THE DEFENDANT: And, Your Honor, just to
13 clarify, we don't have the internet in our house now.
14 We just have computers for word processing or that sort
15 of thing.

16 THE COURT: And I am sure they would be happy
17 once they accessed it to find out that that is still
18 the case.

19 THE DEFENDANT: Yes.

20 THE COURT: And the part with no contact with
21 minors unless supervised with other adults present,
22 your son is eighteen. He is not considered a minor.

23 THE DEFENDANT: Correct.

24 THE COURT: Right?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Any other children around?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Nearby relatives, friends,
4 neighbors?

5 THE DEFENDANT: Neighbors. There are
6 children in the neighborhood, Your Honor.

7 THE COURT: Well, you won't be able to baby
8 sit.

9 THE DEFENDANT: I have been cognizant of the
10 issues and have really tried to distance myself from
11 anything that might have any inappropriate appearance.

12 THE COURT: You don't coach little league or
13 soccer, do you, or anything of that nature?

14 THE DEFENDANT: Not anymore, Your Honor.

15 THE COURT: Okay. Well, none of that will
16 happen while you are on my watch in any event.

17 THE DEFENDANT: I understand.

18 THE COURT: So maintain no contact with
19 minors, and that includes organized community
20 activities. We will then release you on the
21 recommendation of Pretrial and with the agreement of
22 the government on your own recognizance.

23 Fifty thousand dollars is the surety, and
24 that means if you do violate, you will forfeit fifty
25 thousand dollars. That's what that means. But you are

1 released on your own recognizance, subject to these
2 conditions, as soon as you turn over your passport.

3 THE DEFENDANT: I understand, Your Honor.

4 THE COURT: All right. I don't know that
5 there is anything else. Do we have a date for his
6 sentencing in April? How about that last week of
7 April, like we were scheduling somebody else the other
8 day?

9 (Discussion off the record.)

10 THE COURT: I think we can do this at 2:00 on
11 April 23rd.

12 MR. NEFF: Your Honor, if I may, I will be
13 away from the 16th through the 23rd. I think we
14 actually come back either the evening of the 23rd or on
15 the 24th.

16 THE COURT: All right.

17 MR. NEFF: My wife is planning my fiftieth,
18 Your Honor, so it has been in my book for awhile.

19 THE COURT: We don't wish to interfere with
20 that. How are you both on the 27th? That's a Tuesday.

21 MR. NEFF: That's clear on my calendar, Your
22 Honor.

23 MS. MARINARI: Yes, Your Honor.

24 THE COURT: Let's do 10:00 a.m.

25 MR. NEFF: Thank you, Your Honor.

1 THE COURT: Sure.

2 MR. NEFF: My wife will be pleased to know I
3 can attend the celebration.

4 (Pause in proceedings.)

5 THE COURT: We have a Mr. Thompson the day
6 before as well, with two years difference in their case
7 numbers.

8 Okay. Anything else, Counsel?

9 MS. MARINARI: No, Your Honor. Thank you.

10 MR. NEFF: No, Your Honor. Thank you very
11 much.

12 THE COURT: We'll stand in quick recess until
13 our next session.

14 (Proceedings concluded, 3:17 p.m.)

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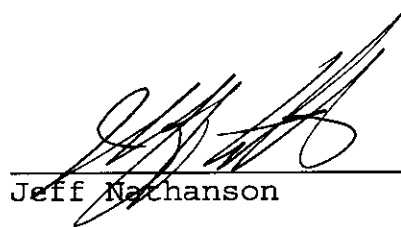
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CERTIFICATION

I, Jeff Nathanson, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

3-26-10
Date


Jeff Nathanson